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Rubinstein, Josesph Samuel

The enfranchisement of leaseholds

London

[1885?]

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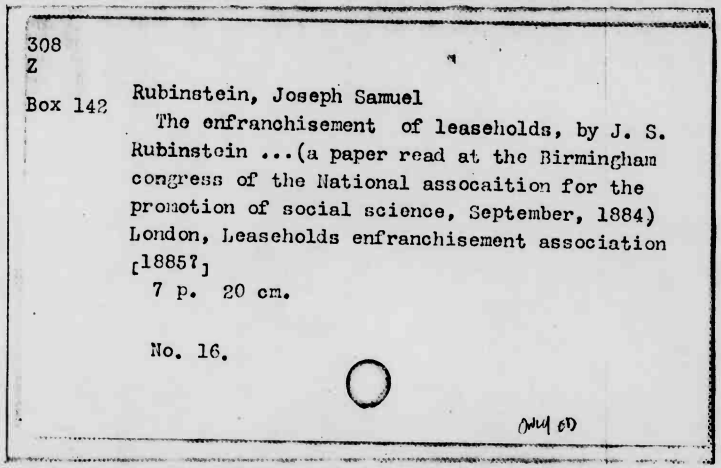

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THE ENFRANCHISEMENT OF LEASEHOLDS,

BY

J. S. RUBINSTEIN,

Solicitor of the Supreme Court.

(A Paper read at the Birmingham Congress of the National Association for the Promotion of Social Science, September, 1884.)

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No. 16.

THE ENFRANCHISEMENT OF LEASEHOLDS.

Would it be advantageous to give to leaseholders powers entitling them to the purchase of the fee simple of the lands and premises they occupy, or otherwise to interfere by law with the prevailing system of building and other long leases? By J. S. RUBINSTEIN, Gray's Inn, London, Solicitor of the Supreme Court.

TO the legislator of our times the pressing problems are the social problems; and foremost amongst them, in this country at least, are the problems connected with land. More and more the State is now resuming the control of the land it foolishly let slip from its grasp in ages of improvidence and misgovernment. The necessity for State interference may be deplored; it can scarcely be denied. The only practical questions are where and how far the State is to step in; and nowhere, perhaps, can the State more effectually step in than in the case of leasehold property. The enfranchisement of copyholds was the achievement of the last generation. The enfranchisement of leaseholds seems destined to be the achievement of this.

As to the evils of the present system there is, and there can be, no dispute. The late Master of the Rolls, Sir George Jessel, once said that if lessors were to enforce their rights to the full extent allowed them by law, leases would not exist in this country for six months. The truth of this all lawyers know. Something, no doubt, has been done by recent legislation to improve the position of leaseholders; relief against forfeiture, for instance, is given far more readily than before: but the inherent evils remain. The occupying owner is still but a precarious tenant, and, worse, a tenant whose interest in the property with which he alone can deal is steadily lessening. The lessor cannot even enter for any purpose not allowed by the lease without a trespass; the actual occupant and owner is so but for a time, and while he has every motive to

patch up, he has no motive to improve his property, still less to add to it or recreate it. For to him it has no future.

The injustice such a tenure works to individuals is manifold. It is easy to say that the lessee becomes a lessee with his eyes open, that no one is obliged to take land or house on lease. But in most cases this is not true in any fair sense of the words. The choice is not unrestricted. In our large towns it is almost an impossibility to obtain a house fit for the lessee's purposes except upon lease; and until the recent depression in agriculture how many farms in England could practically be obtained except upon lease, or, worse, from year to year? The landlords are masters of the situation; you must take on their terms, or go without. The fact that their terms are agreed to is the strongest proof of the utter helplessness of the public in the matter.

The lessee, however long his term, must beware of the error of believing that so long as he pays the ground rent he can do what he likes with the property. He cannot improve it by additions without his landlord's consent. He may find unreasonable and antiquated covenants framed to meet surroundings and circumstances long since passed away still hamper him at every turn; provisions, for example, that the house is to be kept as a private dwelling-house only, when beside and around him the houses have been converted into shops, and the house as a private dwelling-house is now altogether unsuitable; provisions he might, perhaps, disregard, but only at the risk of litigation. Every alteration or improvement again made by the lessee goes to benefit a stranger. His capital is sunk in another man's soil. And these very additions and improvements are taken into account to enhance the price demanded by the landlord when the lease runs out and the lessee seeks a renewal. In reclaimed lands especially it is notorious that the lessee's industry and capital have often created the property whose gains go to the landlord.

All these troubles moreover, are intensified where the lease is granted for lives, not for years. The precariousness of life disconcerts all calculations. Who can put forth his energy, much less his capital, when by the accidents of to-morrow he may find himself deprived of the fruits of both? And the hardship of having to produce the person on whose life continued enjoyment depends, often works grave injustice. The deplorable condition of property held under this tenure is notorious. The law has prohibited lotteries and other

provocatives to gambling. Leases for lives are gambling in its worst shape, and are doubly objectionable, because the lessee is not given any option but to take the property on these terms or not at all.

If the evils of leasehold tenure were confined to the individual tenant he might be blamed for his improvidence; a general strike, rather than a change in the law, might be advisable, and it might be harder to prove the necessity for State interference; but the matter is one in which the whole community is interested, for it injuriously affects building. Everybody is interested in repressing the 'jerry' building, the scamped work, the sordid uniformity that disfigure the spreading outskirts of our towns. The health of the people depends on the sanitary conditions under which they live. If a person neglects proper sanitary precautions in his dwelling he may spread disease among many who in their houses neglect no precaution. The public is deeply interested in having the houses in the first instance properly built, and from time to time properly renewed; but so long as a system prevails that limits strictly the period of ownership, work that is 'scamped' must be expected in the outset, and greater efforts to evade the responsibility for thorough repair will of course be made the more nearly the time approaches for the ownership to cease. Equity itself as administered in our law courts expects an executor to assign onerous leaseholds to a man of straw, and thus sanctions an evasion of law-given rights as being in their actual working iniquitous.

The view that the ground holder should in course of time become entitled to every building upon the ground would seem indeed to be an inverted view of what is right. Surely the man whose energy and capital has built the house and given the ground the value it possesses should, if the matter were governed by principles of abstract justice, become in time the owner of the land upon which it stands.

By the opponents of the enfranchisement of leaseholds, it has been said that if the freeholder were compelled to part with his interest to the leaseholders, a lessee who converted his tenure into freehold would then be free from the restrictions of the lease, and could use the property so as to be a nuisance to the neighbours, and to depreciate the value of adjoining property. But no one would object to provisions that on a building estate the regulations framed for the general benefit and enjoyment of the occupiers should still be binding even after enfranchisement. Similar provisions

apply at the present time to nearly all freehold building estates, and the same principle might be made applicable to all houses held on lease. Enlarged powers should, if necessary, be given to the local authorities for the protection of property in their district, and every aggrieved person should have a right to ask the protection of the law against any act of a neighbour selfishly depreciating adjoining property. In places where the leasehold system is unknown, continental cities for instance, such evils do not arise any more than in London, and the danger is far more imaginary than real.

The same answer will apply to the suggestion advanced as an argument against enfranchisement, that speculators will acquire freeholds for the real purpose of levying black-mail. When it is borne in mind that no one except Mr. George has ever suggested that landlords should be obliged to sell the land except at its proper value, it will be seen that only a bold speculator indeed would acquire land at its value plus the expense of its enfranchisement, with the view of obtaining illicit profit by injuring, or threatening to injure, adjoining property in spite of the protection the law should afford.

Two bills dealing with the question of enfranchisement of leaseholds were introduced into Parliament during the last session, one brought in by Mr. Broadhurst, and the other by Lord Randolph Churchill. The first of these reached a second reading, but was thrown out in a division by 168 votes against 104, a majority of 64. Such a division should greatly encourage all advocates of the change. The measure conferred upon every leaseholder whose lease had twenty years still to run a right to enfranchise the value of the landlord's interest at a price to be assessed by the county court judge of the district. The other bill applied to leases originally granted for a term exceeding twenty-one years, and of which term twenty-one years should be unexpired when application to enfranchise should be made. The county court is in it also named as the tribunal to assess the amount to be paid to the landlord, where the annual value does not exceed 50*l.*; above that amount proceedings were to be taken under the Lands Clauses Consolidation Act, 1845. This bill provided for payment to the landlord not only of the ascertained value, but also of the extra ten per cent. usual on a forced sale, and it is limited to property not exceeding five acres in extent. The expense of assessing the value is by both bills thrown on the lessee seeking enfranchisement. But both these measures are inadequate.

There is one class of persons—the occupiers—whose interests are deserving of consideration in any legislation as to leaseholds. A leaseholder is not necessarily, and in fact frequently is not, the occupier; yet no one has a greater interest in the house, or is more sensitive to its defects, than the person that lives in it, It is he who suffers if the house wants repair. Why should not a *bonâ fide* occupier, a person who has lived in a house for say not less than five years, have the right to purchase all superior interests? It must be to the public interest that as many people as possible should own the houses they live in. As to farms of course other considerations come in, but I speak of residential property.

As regards the tribunals by which values are to be assessed, both the county court and juries under the Lands Clauses Consolidation Acts are open to many objections. If an enfranchisement bill became law, the new work created would surely be sufficient to justify the establishment of a special tribunal to deal cheaply and effectively with those particular questions. The Court created by the Irish Land Act, 1880, is an experiment that might well be repeated.

The principle on which the amount to be paid to the landlord should be ascertained would, it is thought, be best settled by provisions to the effect that where the lease had over a certain term to run, then the amount should be ascertained on the rental payable, and the price for the time being of Consols. In other cases the value would have to be the market value, no matter by what machinery ascertained. Elsewhere I have suggested that leases over thirty-five years may be defined as long leases. Perhaps that term might be adopted as determining whether the landlord's interest should be calculated on one principle or the other.

The conclusions, therefore, suggested by this paper are:—

1. That leases for lives, or dependent upon the happening of any uncertain event, should be prohibited by law.
2. That the right to enfranchise leaseholds should be conferred on the holder of every lease for over twenty-one years unexpired, and on every occupier of residential property if in possession for five years continuously, irrespective of the length of the lease.
3. That ultimately every *bonâ fide* occupier should be entitled to acquire all superior interests.
4. That a special tribunal should be created to deal with these enfranchisements.

5. That where a term has over thirty-five years to run, the landlord's interest should be calculated upon the rental and the then price of Consols; but where the term has less than thirty-five years to run, the market value should be ascertained by some process of assessment.

If these suggestions should be carried into effect, a great step would indeed be taken to putting an end to that severance of ownership from occupation so long the reproach of our land laws, and a blot on our social system.

The following is a List of the 104 Members who voted in favour of the Second Reading of Mr. Broadhurst's Bill, on the 19th March, 1885.

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Willyams, E. W. B.
Wilson, Sir M.
Wolff, Sir H. D.
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TELLERS.

Mr. Broadhurst
Mr. R. Reid

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